

A response to Marc Brodsky...

PROTESTS FORCE *PHYSICS TODAY* TO REVEAL ITS UNSOUND CASE

For many months after *Physics Today* fired Jeff Schmidt over his book *Disciplined Minds*, the magazine refused to respond to, or even acknowledge, the many letters of protest it was receiving. Then, in August 2001, as pressure mounted, Marc Brodsky, head of the American Institute of Physics, which publishes *Physics Today*, mentioned to some concerned physicists that “AIP may be forced to issue a public statement.” A week later, the American Institute of Physics finally broke its silence.

Some people had given *Physics Today* the benefit of the doubt, figuring that there must be some unstated compelling reason why Jeff deserved to be fired. Brodsky’s statement should provide an assurance that no such reason exists.

Moreover, a close look at Brodsky’s statement points to the real reasons for Jeff’s dismissal — namely, the critical nature of his book and his history of workplace activism. Far from justifying AIP’s actions, Brodsky’s statement verifies in many ways that the Institute’s behavior in this case has been unacceptably out of line with the values and expectations of the community that it is supposed to serve and represent to the world:

1. Brodsky claims that he fired Jeff on the sole basis of the opening lines of *Disciplined Minds*, in which Jeff dramatizes the fact that he wrote the book in part at the office. But Brodsky knows that AIP employees engage in a wide variety of spare-time activity at work — chatting with coworkers, writing personal e-mail, making personal phone calls, surfing the Web and so on — and he has never punished anyone for that, or even discouraged it. Yet he says he fired Jeff for “pursuing activities beyond what he was supposed to be doing on work time,” or, if not actually that, then at least “asserting that he did.” Jeff received much praise for his work at *Physics Today*, from his supervisors, from the authors of the articles he edited and from members of the physics community. What made his workplace activities beyond his assignments grounds for firing, if not the critical nature of those activities?

2. Brodsky claims that Jeff’s “termination had nothing to do with the subject matter” of his book. But then he approvingly quotes the National Labor Relations Board’s explanation that it is an assessment of the book as a whole — a view of “the nature of the work involved in this matter” — that allows AIP to read the book’s introduction in a way that justifies firing Jeff.

3. Brodsky’s emphasis on his legal right to fire Jeff misses the point. “No agency has found that AIP violated any law,” boasts Brodsky. But the hundreds of physicists and others who are speaking out in this case aren’t saying that Jeff’s dismissal was illegal, but rather that it violated the physics

community's norms of tolerance for differing viewpoints, norms that are essential for the community's functioning and credibility.

Brotsky cites the National Labor Relations Board as the authority in this case. However, the NLRB's sole mission is to determine whether there has been a violation of the National Labor Relations Act of 1934, which made employee organizing a legally protected activity but did not protect book writing. The NLRB is not the appropriate body to determine what is right or wrong for the physics community, nor is any other government agency or court.

4. It's surprising that Brotsky would even mention the NLRB, because, as he himself must know, the agency's investigation found *Physics Today* to be a repressive and vengeful employer. Brotsky hides this fact by quoting very selectively from the NLRB's findings, focusing on employer rights. He does not quote the findings most relevant to the concerns of the physics community and others who value free expression. The findings were reported by NLRB General Counsel Arthur F. Rosenfeld — a former U.S. Chamber of Commerce lawyer appointed by George W. Bush and no friend of workplace organizers and activists. According to Rosenfeld...

“The evidence adduced during the Regional Office investigation established a prima facie case that Charging Party Jeff Schmidt was discharged for engaging in protected concerted activities. Thus, the evidence indicated that Jeff Schmidt engaged in extensive protected activity for over a decade, that the Employer had knowledge that Schmidt was engaged in such activity, and that the Employer bore animus towards Schmidt for engaging in such activity.”

The “protected activity” here is the workplace organizing that Jeff had been doing.

Rosenfeld also took into account what he called *Physics Today*'s “threats of discipline and other retaliatory conduct in order to discourage employees from discussing working conditions with each other and informing the Employer of their collective concerns.” And he noted that such behavior “is conduct violative of the National Labor Relations Act.”

Nevertheless, a private corporation in the United States has the legal right to fire an employee for writing a book it doesn't like. So the NLRB concluded that while *Physics Today* may very well have engaged in numerous illegal repressive activities, firing Jeff over the book could not be counted as one of them. With Jeff's firing excluded from the case, the NLRB decided, as a matter of prosecutorial discretion, not to take action on the rest of the case. (The NLRB is not required, and does not have the resources, to prosecute all illegal activity.) Thus *Physics Today* escaped prosecution, but not, as

Brodsky implies, because of its exemplary or even legal behavior. A high standard indeed for an organization representing the physics community!

Jeff's book is critical of management and critical of the political subordination of working scientists and other salaried professionals. By firing Jeff, Marc Brodsky, *Physics Today* and the American Institute of Physics, as well as the American Physical Society and the other organizations that govern AIP, have made it clear that they are more interested in enforcing that subordination than in living up to the physics community's norms of free expression.

AIP's statement is weak and legalistic, and confirms the worst fears of Jeff's many supporters. We ask, more resolutely than ever, that *Physics Today* do the right thing and give Jeff his job back.

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